

314 CMR: DIVISION OF WATER POLLUTION CONTROL

314 CMR 2.00: PERMIT PROCEDURES



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2.01: Purpose and Authority

314 CMR 2.00 establishes the procedures for processing applications for all permits issued by the Department under M.G.L. c. 21, § 43. These permits are:

- (1) surface water discharge permits subject to 314 CMR 3.00;
- (2) ground water discharge permits subject to 314 CMR 5.00; and
- (3) sewer extension and connection permits subject to 314 CMR 7.00.

314 CMR 2.00 is established in accordance not only with the requirements of M.G.L. c. 21, § 43, but with the requirements of the Federal Clean Water Act, 33 U.S.C. 1251 *et seq.*, and the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. 6901 *et seq.* Consistency with the permitting procedures established under these Federal acts is necessary to enable the Department to assume delegation of authority from the EPA to administer the NPDES and RCRA permit programs within the Commonwealth.

Whenever provisions of 310 CMR 7.00 or 30.000 are cited or cross-referenced in 314 CMR 2.00, the provisions cited shall be those published in the Massachusetts Register on or before November 9, 1984.

2.02: Definitions

When used in 314 CMR 2.00, the following words shall have the following meanings:

Adjudicatory Hearing - a hearing conducted as part of an adjudicatory proceeding as defined in M.G.L. c. 30A, § 1 and pursuant to 801 CMR 1.01, as amended by 310 CMR 1.00.

Department - the Department of Environmental Protection.

EPA - the United States Environmental Protection Agency.

Federal Act - the Federal Clean Water Act, as amended, 33 U.S.C. 1251 *et seq.*

NPDES - the National Pollutant Discharge Elimination System permit program established pursuant to 33 U.S.C. 1342.

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Person - any agency or political subdivision of the Commonwealth, the Federal government, any public or private corporation or authority, individual, partnership or association, or other entity, including any officer of a public or private agency or organization, upon whom a duty may be imposed by or pursuant to any provisions of M.G.L. c. 21, §§ 26 through 53.

Public Entity - any city, town, special district, the metropolitan district commission or other existing governmental unit eligible to receive a grant for the construction of treatment works from the United States Environmental Protection Agency pursuant to Title II of the Federal Act, as amended.

Prevention of Significant Deterioration or PSD - the national permitting program under 40 CFR 52.21 to prevent emissions of certain pollutants regulated under the Clean Air Act from significantly deteriorating air quality in attainment areas.

RCRA - the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (P.L. 94-580, as amended by P.L. 95-609, 42 U.S.C. Section 6901 *et seq.*)

RCRA Facility - a hazardous waste management facility as defined in 314 CMR 8.03.

UIC or Underground Injection Control - the established program under Section 1421 of the Safe Drinking Water Act (P.L. 93-523 as amended by P.L. 95-190 and 96-502).

404 - Section 404 of the Federal Clean Water Act, (P.L. 95-217 as amended, 33 U.S.C., Section 1344.

2.03: Application for a Permit

(1) Who must apply. Any person required to obtain a permit under M.G.L. c. 21, § 43 shall apply to the Department for such permit by completing and submitting the appropriate application form.

(2) Completeness of Application. The Department shall not issue a permit before receiving a complete application. Upon receipt of the application, the Department will review the form to determine the completeness of the information contained therein. If the Department deems the application incomplete, it will not be processed by the Department until the inadequacies identified by the Department have been corrected by the applicant. Where the applicant fails to correct the inadequacies identified by the Department within applicable timeframes, or requests that the application be processed as submitted, the Department may proceed to process the application. Insufficiency of the information in the application may result in, and form the basis for, a denial of the permit. The Department may require the applicant to provide additional information and to attend informal conferences relative to any permit application. Permit applications will be processed in accordance with 310 CMR 4.00 and where appropriate, 314 CMR 3.00, 5.00, 7.00 or 9.00.

2.04: Tentative Determination and Preparation of Draft Permit

(1) Within a reasonable time following receipt of a complete application, the Department shall tentatively determine to issue or deny the permit.

(2) If the Department tentatively determines to issue the permit, a draft permit shall be prepared. The draft permit shall contain such terms and conditions which the Department deems necessary to insure that the permitted activity or facility complies with all applicable requirements of the State or Federal Acts, and regulations adopted thereunder.

2.05: Preparation of Fact Sheet or Statement of Basis for Permit

(1) For every draft permit for a surface water or ground water discharge or for a RCRA facility, the Department shall prepare a fact sheet or statement of basis for the permit in accordance with 314 CMR 2.05.

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(2) A fact sheet shall be prepared for every draft permit for a major facility or activity, for every draft permit that incorporates a variance, and for every draft permit which the Department finds is the subject of widespread public interest or raises major issues.

(3) The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Department shall send a copy of the fact sheet and draft permit to the applicant and, on request, a copy of the fact sheet, permit application and draft permit to any other person.

The fact sheet shall include where applicable:

- (a) A brief description of the type of facility or activity which is the subject of the draft permit;
- (b) The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;
- (c) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;
- (d) Reasons why any requested variances or alternatives to required standards do or do not appear justified;
- (e) A description of the procedures for reaching a final decision on the draft permit including:
 - 1. The beginning and ending dates of the comment period under 314 CMR 2.06 and the address where comments will be received;
 - 2. Procedures for requesting a hearing and the nature of that hearing under 314 CMR 2.07; and
 - 3. Any other procedure by which the public may participate in the final decision;
- (f) Name and telephone number of a person to contact for additional information;
- (g) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions, including a citation to any applicable effluent limitation guideline or performance standard provisions and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed;
- (h) When the draft permit contains any of the following conditions, an explanation of the reasons why such conditions are applicable:
 - 1. Limitations to control toxic pollutants;
 - 2. Limitations on internal wastestreams;
 - 3. Limitations on indicator pollutants; and
- (i) When appropriate, a sketch or detailed description of the location of the discharge described in the application.

(4) Where a request for a determination under 33 U.S.C. 1251 § 316(a) has been filed relative to a surface water discharge permit, the fact sheet shall also contain:

- (a) A statement that the thermal component of the discharge is subject to effluent limitations under 33 U.S.C. 1251 §§ 301 or 306 and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under 33 U.S.C. 1251 § 301 or 306;
- (b) A statement that a 33 U.S.C. 1251 § 316(a) request has been filed and that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge under 33 U.S.C. 1251 § 316(a) and a brief description, including a quantitative statement, of the alternative effluent limitations, if any, in the request; and
- (c) If the applicant has filed an early screening request for a 33 U.S.C. 1251 § 316(a) variance, a statement that the applicant has submitted such a plan.

(5) The Department shall prepare a statement of basis for every draft permit for which a fact sheet is not prepared. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them, including references to applicable statutory or regulatory provisions, or in the case of a tentative determination to deny, suspend or revoke a permit, the reasons supporting the tentative determination. The statement of basis shall be sent to the applicant and, on request, to any other person.

2.06: Public Notice

(1) The Department shall require public notice of the following permit proceedings to be published at the applicant's or permittee's expense in accordance with the requirements of 314 CMR 2.06:

- (a) The preparation of a draft permit and tentative determination to issue the permit under 314 CMR 2.04;
- (b) The renewal of a permit under 314 CMR 2.10;
- (c) The modification of a permit under 314 CMR 2.10, when the modification is at the request of the permittee and when public notice is required under 314 CMR 2.10
- (d) A public hearing under 314 CMR 2.07 on the Department's tentative determination to issue permit under 314 CMR 2.04, and on the renewal of a permit under 314 CMR 2.10, if such public hearing is requested by an applicant or permittee, and on the modification of a permit under 314 CMR 2.10 when the modification is at the request of the permittee.

For all other permit proceedings requiring public notice under 314 CMR 2.06, including, but not limited to, a tentative determination to deny a permit, or a determination to suspend or revoke an existing permit under 314 CMR 2.04 and 314 CMR 2.10, or to modify a permit when the modification is not at the request of the permittee and when public notice is required under 314 CMR 2.10, the Department shall give public notice of such permit proceedings in accordance with 314 CMR 2.06. Public notices may describe more than one permit or permit proceedings.

(2) Public notice of the preparation of a draft permit and of a tentative determination shall afford at least 30 days for public comment. In the case of RCRA facilities, the public notice shall afford at least 45 days for public comment.

(3) Copies of the public notice shall be published and mailed as follows:

- (a) Notice shall be published in at least one newspaper of general circulation in the area of the facility or discharge, and a copy of the notice shall be filed with the State Secretary as provided in M.G.L. c. 30A, § 3 for publication in the Central Register. For those permit proceedings requiring publication of public notice by the applicant or permittee under 314 CMR 2.06(1)(a) through (d), the applicant or permittee shall submit a copy of the public notice as published in the newspaper to the Department within seven days of the date of publication along with the name and address of the newspaper and the date(s) the notice appeared in the newspaper.
- (b) When published by the Department, notice shall be mailed to the applicant. Notice also shall be mailed to any person filing written request for notice of specific permit proceedings, such request to be renewed annually.

For surface water discharge permits and for permits for RCRA facilities only, notice, together with a copy of any fact sheet or statement of basis, the draft permit, if any, and the application shall also be mailed to:

- 1. Any other agency which the Department knows has issued or is required to issue a RCRA, UIC, PSD, NPDES or 404 permit under the Federal Act for the same facility or activity, including EPA;
- 2. Federal and State agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, the Massachusetts Historical Commission and other appropriate government authorities, including any affected States; and
- 3. Any State agency responsible for plan development under 33 U.S.C. 1251 §§ 208(b)(2), 208(b)(4) or 303(e) and the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service.

For permits for RCRA facilities, in addition to local newspaper publication, the notice shall be broadcast over local radio stations.

(4) Contents of Notice. All public notices shall contain the following minimum information:

- (a) the name and address of the office processing the permit application;
- (b) the name and address of the permittee or permit applicant, and, if different, of the facility or discharge regulated by the permit;
- (c) the name, address and telephone number of the person from whom the draft permit, statement of basis or fact sheet, and the application may be obtained;

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- (d) the time within which the public may comment or request a public hearing; and
- (e) the tentative determination to issue or deny the permit, and the statutory and regulatory authority under which the determination is made.

In addition, public notice of surface water discharge permit proceedings shall contain a general description of the location of each existing or proposed discharge point and the name of the receiving water.

Where a request for a determination under Section 316(a) of the Federal Act has been filed relative to a surface water discharge permit, the public notice shall contain a statement to that effect.

2.07: Public Hearings

If the applicant or permittee requests a public hearing, or if the Department determines a public hearing to be in the public interest, the Department shall schedule and conduct such hearing in a community within the area affected by the facility or discharge which is the subject of the permit. Public notice of the public hearing shall be published in accordance with 314 CMR 2.06 at least 30 days prior to the hearing. Such public notice shall contain, in addition to the contents specified in 314 CMR 2.06(4), reference to the date of previous public notices relating to the permit; the date, time and place of the hearing; and a brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

For RCRA facilities, the Department shall schedule and conduct a public hearing whenever the Department receives written notice of opposition to a draft permit and a request for a hearing within the public comment period provided in 314 CMR 2.06(2).

Where a public hearing is held under 314 CMR 2.07, the public comment period under 314 CMR 2.06 shall be extended to the conclusion of the public hearing or such later date as may be established by the Department at the public hearing.

2.08: Issuance and Effective Date of Permit

After the conclusion of the public comment period provided in 314 CMR 2.06 or 2.07, the Department shall issue the permit or final determination to deny the permit. If no comments objecting to the issuance or terms of the permit were received by the Department during the public comment period, the permit or final determination shall be effective upon issuance. If comments objecting to the issuance or the terms of the permit were received by the Department during the public comment period, the permit shall become effective 30 days after issuance.

During the 30 day period following issuance of the permit, any person aggrieved by the issuance of the permit or final determination may file a request for an adjudicatory hearing relative thereto with the Department. The standing of a person to request a hearing, and the procedures for filing such request shall be governed by the provisions of M.G.L. c. 30A and 314 CMR 1.00. Unless the person requesting the adjudicatory hearing requests and is granted a stay of the terms and conditions of the permit, the permit shall remain effective or become effective at the conclusion of the 30 day period.

2.09: Response to Comments

At the time of issuance of the final permit under 314 CMR 2.08, the Department shall issue a response to comments which shall be available to the public. This response to comments shall:

- (1) Specify which provisions, if any, of the draft permit have been changed in the final permit, and the reasons for the change; and
- (2) Briefly describe and respond to all significant comments on the draft permit raised during the public notice comment period under 314 CMR 2.06, or during any hearing held under 314 CMR 2.07.

2.10: Modification, Suspension, Revocation, and Renewal of Permits

As provided in M.G.L. c. 21, § 43(10), the Department may propose and determine to modify, suspend or revoke any outstanding permit, in whole or in part, for cause including, but not limited to, violation of any permit term, obtaining a permit by misrepresentation or failure to disclose fully all relevant facts or any change in or discovery of conditions that calls for reduction or discontinuance of the authorized discharge or activity. The Department may also modify a permit at the request of the permittee upon a showing, satisfactory to the Department, that the requested modification is appropriate in view of circumstances for which the permittee is not at fault.

Any interested person may request the Department to modify, suspend or revoke any outstanding permit for RCRA facility. If the Department decides to deny such a request the Department shall prepare a brief written response giving a reason for the Department's decision. Denial of such a request shall not be subject to public notice, public comment, or public hearings pursuant to 314 CMR 2.04 through 2.09, or to an adjudicatory hearing pursuant to 314 CMR 1.00.

A modification or renewal of a permit shall be processed under 314 CMR 2.00 in the same manner as a permit application is processed, and a suspension or revocation shall be processed in the same manner as a denial of a permit application; provided, minor permit modifications authorized under 314 CMR 3.12(3), 5.12(3), and 7.12(3) may be processed without compliance with the public notice and hearing procedures of 314 CMR 2.06 and 2.07.

In a permit modification under 314 CMR 2.10, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit.

2.11: Confidentiality of Information

(1) In accordance with M.G.L. c. 21, § 27(7) and 310 CMR 3.00, any information submitted to the Department pursuant to these regulations, may be claimed as confidential by the submitter, except the information described in 314 CMR 2.11(2). Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions, or in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, the Department may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the requirements of 310 CMR 3.00.

(2) Claims of confidentiality shall be denied for the following information:

- (a) the name and address of any permit applicant or permittee and
- (b) any permit or effluent data and data related thereto, including all information contained in permit application forms. This includes any attachments to the application form, but only to the extent required by the application form.

Additional material requested by the Department during permit processing may be claimed confidential if it was not required by the application form, in which case the claim will be resolved following the procedures contained in 310 CMR 3.00.

2.12: Permit Fees

In accordance with the provisions of M.G.L. c. 7, § 3B, and M.G.L. c. 21, § 43, the Department is authorized to impose and collect permit fees from permit applicants and permittees as follows:

(1) Application Fees. Any person other than a public entity required to obtain a permit pursuant to M.G.L. c. 21, § 43 and 314 CMR 3.00, 5.00 and 7.00 shall submit together with the permit application, any fees established by the Department. Such application fee shall be payable to the Commonwealth of Massachusetts at the time of application and shall be a condition prerequisite to obtaining a permit or the renewal of such a permit. Failure to pay such fee shall be cause for the Department to deny the permit or refuse to renew such permit. Applicants shall be advised of the amount of any applicable fee as part of the permit application or application instructions.

(2) Annual Inspection Certificate Fee.

(a) Any permittee, other than a public entity, required to obtain a surface water or ground water discharge permit pursuant to M.G.L. c. 21, § 43 and 314 CMR 3.00 and 5.00, shall be required annually to obtain an inspection certificate from the Department as a condition of the permit. Such permittees shall submit to the Department in connection with such certificate, on a form to be supplied by the Department, such information as the Department may specify, including, but not limited to:

1. the nature and amount of pollutants discharged from the treatment works;
2. information which may be needed to determine the nature and amount of pollutants discharged from the treatment works; and
3. any other information pertaining to the operation of the treatment works and the discharge therefrom.

(b) The information required in 314 CMR 2.12(2)(a) shall be submitted annually within 30 days of notice from the Department requiring its submission, together with the fee prescribed in 314 CMR 2.12(2)(c). After verification by the Department of information submitted by the permittee, and after submission of the fee, the Department shall issue an inspection certificate to the permittee.

Issuance of such inspection certificate annually shall be a condition of the permit, and failure to obtain such certificate shall be cause for revocation of the permit. Copies of such certificate and the information submitted by the permittee to obtain such certificate shall be available to the public in accordance with 314 CMR 2.11.

(c) Any permittee required to obtain an inspection certificate pursuant to 314 CMR 2.12(2) shall submit together with the information required in 314 CMR 2.12(2)(a) payment of a fee to the Commonwealth of Massachusetts as established by the Department. The permittee shall be advised of the amount of such fee by the Department as part of the notice from the Department under 314 CMR 2.12(2)(b). Failure to pay such fee shall be basis for denial of the inspection certificate.

REGULATORY AUTHORITY

314 CMR 2.00: M.G.L. c. 21, §§ 27(12) and 43.

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